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IN THE  
**Supreme Court of the United States**

October Term, 1944.

No. **168** !

LONDON WEATHERPROOFS, INC.,  
*Petitioner,*

vs.

THE UNITED STATES OF AMERICA,  
*Respondent.*

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Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit  
and Brief in Support of Petition.

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DAVID J. SHORB,  
*Counsel for Petitioner.*

KENNETH CARROAD,  
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*Of Counsel.*

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LONDON APPEAL PARAS, INC., 65-67 Duane St., N. Y. C., Tel. WOrth-9-0689



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**TABLE OF CASES AND STATUTES CITED.**

Please refer to Table of Cases and Statutes Cited in petition and brief filed on behalf of petitioner in *Louis F. Hall & Co., Inc. v. U. S.*

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1944.

LONDON WEATHERPROOFS, INC.,  
*Petitioner,*

vs.

THE UNITED STATES OF AMERICA,  
*Respondent.*

No. ....

**Petition for Writ of Certiorari to the United States Circuit  
Court of Appeals for the Second Circuit and  
Brief in Support of Petition.**

*To the Honorable Harlan F. Stone, Chief Justice of the  
United States and the Associate Justices of the Su-  
preme Court of the United States:*

Your petitioner respectfully shows:

**Summary Statement of Matter Involved.**

An order granting respondent's motion for summary judgment was entered by the District Court of the United States for the Eastern District of New York on April 24, 1944 (R. p. 52). This order was affirmed by the United States Circuit Court of Appeals for the Second Circuit on April 9, 1945 (R. p. 58). Petitioner prays that a writ of certiorari issue to review said affirmance.

On June 30, 1937 petitioner filed with the office of the Collector of Internal Revenue, Second District of New York, an amended claim for refund of \$268.39 paid as compensating taxes under the provisions of the Agricultural Adjustment Act of 1933, with an affidavit of the Secretary of the petitioner-corporation attached (R. p. 10). On March 30, 1939 petitioner was notified that its amended claim for refund (P. T. Form 77) had been rejected on the ground that petitioner had not submitted evidence sufficient to establish that it bore the burden of the tax, refund of which was claimed, as required by Section 902 of the Revenue Act of 1936 and Regulations 96 (R. pp. 23-24).

On March 13, 1941 petitioner instituted suit in the District Court for the refund of the compensating taxes paid as aforesaid (R. p. 2). After answer, respondent moved for summary judgment (R. p. 34) on the complaint, answer and affidavit of M. F. Snider, theretofore filed (R. p. 8). The District Court granted the motion for summary judgment on the grounds, as appear in the opinion (R. pp. 43-45) that (1) Section 903 of the Revenue Act of 1936 required the petitioner to submit evidence to the Commissioner of Internal Revenue in support of its claim, from which the Commissioner could ascertain whether petitioner was entitled to a refund, and (2) that petitioner having failed to submit such evidence to the Commissioner, could not upon a trial of the action offer evidence to establish that fact. Relying on *Samara v. U. S.*, 129 F. (2d) 594 (C. C. A. 2d, 1942), the Court held that facts which were not presented to the Commissioner could not be produced at the trial and that in effect its province was to review only such evidence as was presented to the Commissioner.

A motion for reargument was made on November 23, 1943 (R. pp. 45-46) and denied on December 11, 1943 (R. p. 51). An order was entered on said decision on April 24, 1944 granting respondent's motion for summary judgment (R. p. 52).

The Circuit Court affirmed the judgment of the District Court (April 9, 1945) on the authority of *Samara v. U. S.*, *supra*, and *Louis F. Hall & Co., Inc. v. U. S.*, decided the same day (R. p. 58). The affirmance of the Circuit Court in the instant case was simultaneous with its affirmance of the judgment in the *Hall* case. The basis of the affirmance in both is the *Samara* case. Since the Circuit Court in the instant case referred to its opinion in the *Hall* case, simultaneously rendered by it, basing its opinion on said case as well, and since the petition and brief for writ of certiorari in the *Hall* case is being filed simultaneously with that in the instant case, this petitioner begs leave to refer to said petition and brief in the *Hall* case wherever possible in the interests of brevity and time saving for this Court. Wherever such references are made, this petitioner incorporates same into this petition and brief as though made a part hereof.

#### **Jurisdictional Statement.**

This Court is respectfully referred to the "Jurisdictional Statement" contained in the *Hall* petition, which statement is hereby adopted as and for the Jurisdictional Statement of the petitioner herein and made a part hereof.

#### **Questions Presented.**

This Court is respectfully referred to the statement of "Questions Presented" in the *Hall* petition, which statement is hereby adopted as the statement of Questions Presented of the petitioner herein and made a part hereof.

#### **Reasons Relied on for Allowance of Writ.**

This Court is respectfully referred to the statement of "Reasons Relied on for Allowance of Writ" contained in the *Hall* petition, which statement is hereby adopted as

Reasons Relied on for Allowance of Writ of the petitioner herein and made a part hereof.

WHEREFORE, your petitioner prays that a writ of certiorari issue under the seal of this court, directed to the Circuit Court of Appeals for the Second Circuit, commanding said court to certify and send to this court a full and complete transcript of the record and of the proceedings of the said Circuit Court had in the case entitled on its docket *London Weatherproofs, Inc., Appellant v. The United States of America, Appellee*, to the end that this cause may be reviewed and determined by this court as provided for by the statutes of the United States; and that the judgment herein of said Circuit Court be reversed by this court, and for such further relief as this court may deem proper.

Dated: .....

DAVID J. SHORB,  
*Counsel for Petitioner.*







## **BRIEF IN SUPPORT OF PETITION.**

### **Opinions of Courts Below.**

The opinion of the Circuit Court of Appeals for the Second Circuit (R. p. 57) was rendered on March 23, 1945. The opinions of the District Court were rendered by the District Court for the Eastern District of New York on October 21, 1943 and December 11, 1943. An order was entered by said District Court (R. p. 52) on April 24, 1944, granting respondent's motion for summary judgment. Judgment of the aforesaid Circuit Court affirming the District Court's judgment was entered on April 9, 1945 (R. p. 58).

### **Jurisdiction.**

This Court is respectfully referred to the statement of Jurisdiction contained in the *Hall* brief, which statement is hereby adopted and made a part hereof.

### **Statement of Case.**

This has already been stated in the preceding petition in "Summary Statement of Matter Involved" (pp. 1-3), which is hereby adopted and made a part of this brief.

### **Specification of Errors.**

This Court is respectfully referred to the statement of Specification of Errors contained in the *Hall* brief, which statement is hereby adopted by the petitioner herein and made a part hereof.

## **ARGUMENT.**

### **Summary of Argument.**

Certiorari should be granted for the reasons that:

#### **POINT I.**

The Circuit Court's decision is in direct conflict with decisions of the Third Circuit and District Courts in other circuits, on the question as to whether Sections 902 and 903 of the Revenue Act of 1936 and Regulations 96 require the submission of evidence to the Commissioner of Internal Revenue in support of a claim for refund of taxes paid under the Agricultural Adjustment Act of 1933.

#### **POINT II.**

The Circuit Court's decision is in direct conflict with decisions of the Fifth and Sixth Circuits, involving similar statutes and regulations, on the question as to whether the submission of evidence to the Commissioner of Internal Revenue is required in support of a claim for refund.

#### **POINT III.**

An important and substantial question of Federal Law is involved which has not been and should be settled by the Supreme Court.

This Court is respectfully referred to the Argument contained in the *Hall* brief in Points I, II and III, which Argument and Points are hereby adopted by the petitioner herein and made a part hereof.

This Court is also respectfully referred to the appendix used in the *Hall* brief, which sets forth the Statutes and

Regulations involved in that case. Said Statutes and Regulations are also involved in the instant case. Said appendix is therefore adopted by the petitioner herein and made a part of this brief.

It is respectfully submitted that this case, as the *Hall* case, and for the Reasons and Argument therein stated, is one calling for an exercise by this Court of its supervisory powers by granting writ of certiorari and thereafter reviewing and reversing said decision.

DAVID J. SHORB,  
*Counsel for Petitioner.*



# In the Supreme Court of the United States

OCTOBER TERM, 1945

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No. 168

LONDON WEATHERPROOFS, INC., PETITIONER

v.

THE UNITED STATES OF AMERICA

---

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS FOR THE SECOND  
CIRCUIT

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## MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

This action was brought against the United States, in the District Court for the Eastern District of New York, to recover \$268.39 paid as compensating tax and \$206.43 paid as floor stocks tax under the Agricultural Adjustment Act, c. 25, 48 Stat. 31, the taxing provisions of which were held unconstitutional in *United States v. Butler*, 297 U. S. 1, and *Rickert Rice Mills v. Fontenot*, 297 U. S. 110. No claim had been filed for refund of the \$206.43 paid as floor stocks tax and the complaint was dismissed as to that sum, leaving in controversy only the \$268.39 paid as compensating tax. (R. 24-27.) Apart from a

(1)

sworn statement to the effect that taxpayer had not borne the burden of the compensating tax and that price fluctuations on taxpayer's garments made from imported cotton were the result of the fluctuation of the pound sterling only, the claim for refund contained no supporting evidence (R. 9-20). Taxpayer was twice advised that it would be necessary to submit additional evidence, but when such evidence was not received the claim was rejected (R. 23-24).

The Government moved to dismiss the complaint as to the \$268.39 paid as compensating tax on the ground that the taxpayer's claim for refund of the amount was insufficient under the applicable statute and regulations to constitute a basis for this action (R. 6-7). That part of the motion to dismiss was denied by the District Court (R. 24-27, 40 F. Supp. 977; R. 28), and an appeal was taken to the Circuit Court of Appeals for the Second Circuit (R. 29). The appeal subsequently was withdrawn by stipulation of the parties (R. 30), and an answer was filed (R. 31-33) which included affirmative allegations that taxpayer's claim for refund of compensating taxes was insufficient under the statute and regulations because no evidence was submitted in support of the claim which would enable the Commissioner to determine to what extent the taxpayer had borne the burden of the tax paid.

After the decision of the Circuit Court of Appeals for the Second Circuit in *Samara v. United*



*States*, 129 F. 2d 594, certiorari denied, 317 U. S. 686, the Government moved for summary judgment on the complaint and answer filed (R. 34), and in an opinion entered October 21, 1943 (R. 43-45, 52 F. Supp. 1022), the District Court held the taxpayer's refund claim insufficient as a basis for this suit. The motion for summary judgment was granted on April 24, 1944 (R. 52), and the taxpayer appealed to the Circuit Court of Appeals for the Second Circuit (R. 53). That court, in a *per curiam* opinion (R. 57, 148 F. 2d 340) based upon its decision in *Louis F. Hall & Co. v. United States*, 148 F. 2d 274 (now pending before this Court on a similar petition for a writ of certiorari, No. 167, this Term), and *Samara v. United States*, *supra*, affirmed the decision of the District Court. Judgment of affirmance was entered on April 9, 1945 (R. 58).

The petitioner in this case, unlike the taxpayer in the *Louis F. Hall & Co.* case, No. 167, this Term, did not withdraw its claim for refund; petitioner here was repeatedly advised, however, that its claim for refund did not meet the requirements of the applicable statute and regulations and that further supporting evidence would be necessary, but it made no effort to comply (R. 23). This case, therefore, involves a situation little different from that involved in the *Louis F. Hall & Co.* case, and for the reasons stated in the brief in opposition in that case, filed concurrently here-

with, the petition for a writ of certiorari should be denied.

Respectfully submitted,

HUGH B. COX,  
*Acting Solicitor General.*

SAMUEL O. CLARK, JR.,  
*Assistant Attorney General.*

SEWALL KEY,  
HELEN R. CARLOSS,  
FRED E. YOUNGMAN,

*Special Assistants to the Attorney General.*

JULY 1945.

